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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,115	06/16/2006	Brian Stephen Kimberley	4702-45	1241
23117 7590 10/16/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
LEE, RIP A				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/583,115

Applicant(s)

KIMBERLEY ET AL.

Examiner

RIP A. LEE

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-20 and 22-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 17-20 and 22-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

This office action follows a response filed on July 1, 2008. Claims 17, 25, 26, and 31 were amended, and claim 21 was canceled. Claims 17-20 and 22-32 are pending.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 17-20, 22-24, and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinen *et al.* (U.S. 5,721,184) in view of extrinsic evidence furnished by Specá *et al.* (U.S. 5,786,291).

Brinen *et al.* discloses a process for preparing supported metallocene catalyst. The method involves a technique for evenly distributing a small volume of catalyst component over and among a porous support, resulting in reduction of fouling, or “fines” (abstract, col. 1, lines 26-32). Antistatic agents are also added to the supported catalyst system while the catalyst is in the free flowing state (col. 6, lines 1-9). Example 3 shows that a 160 g of AS990 antistat in toluene is added to supported catalyst containing metallocene, MAO, and 50 lbs (22,680 g) of Davison MS948 silica, having a pore volume of 1.5-1.6 cm³/g (see Specá *et al.*, col. 16, line 40), as the carrier. The total pore volume of catalyst is (22,680 g)(1.5 cm³/g) = 34,020 cm³. The volume of toluene added is (160 g)/(0.867 g/cm³) = 184 cm³, which corresponds to 0.54 % of the total pore volume of catalyst and is considerably less than 10 % of the total pore volume, as claimed. Polymerization of ethylene and 1-hexene in the presence of the catalyst is carried out in a continuous fluidized bed gas phase reactor (col. 13, lines 27-35).

While the working example does not show addition of antistatic agent to dried, supported catalyst, it would have been obvious to one having ordinary skill in the art to prepare supported catalyst, dry to free flowing state, and then add antistatic agent to the dried catalyst because the inventors teach that antistatic agent may be added to the catalyst in the free flowing state. Accordingly, one having ordinary skill in the art would have expected this variation to produce

an equally effective catalyst with a reasonable expectation of success. In sum, the subject of claims 17, 18, 20, 22-24, and 29-31 are obvious over the disclosure of Brinen *et al.*

With respect to claim 19, Brinen *et al.* discloses no preference with respect to the type of solvent used to add antistatic agent. The routineer in the art gleans from the disclosure that inert hydrocarbon solvents such as toluene, ethylbenzene, xylene, hexane, and isobutene are utilized in such polymerization processes (col. 10, lines 45-48). One having ordinary skill in the art would have made the connection that any of these hydrocarbon solvents may be used as diluent for the antistatic agent. Thus, in absence of any showing of criticality or unexpected results, it would have been obvious to one having ordinary skill in the art to add to the supported catalyst a solution of antistatic and hexane, and since hexane is merely the carrier solvent, the skilled artisan would have expected the catalyst to work in reducing fines with a reasonable expectation of success.

Brinen *et al.* does not quantify the level of fines in terms of particle size, as recited in instant claim 32. However, in light of the fact that the object of the invention is to reduce reactor fouling, and in view of the fact that the references makes obvious the process recited in the instant claims, and further in view of the fact that the cited example states that no significant reactor fouling was observed, a reasonable basis exists to believe that fines having the recited particle sizes are, at the very least, "reduced," as recited in the claim. Since the PTO can not perform experiments, the burden is shifted to the Applicants to establish an unobviousness difference. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

3. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brinen *et al.* in view of Canich *et al.* (U.S. 5,075,475).

The discussion of the disclosures of the prior art from the previous paragraph of this office action is incorporated here by reference. Brinen *et al.* teaches that the inventive process for preparing supported catalyst is applicable to known catalysts such as those disclosed in Canich *et al.*, U.S. 5,075,475, the disclosure of which is fully incorporated by reference (col. 3, line 45). Turning to the secondary reference, Canich *et al.* teaches polymerization of olefin(s) in the presence of a supported constrained group metallocene-like catalyst such as

$\text{Me}_2\text{Si}(\text{C}_3\text{Me}_4)(\text{N}-t\text{-Bu})\text{ZrCl}_2/\text{MAO}$ (Table 1, col. 11, line 15, example 1). Preparation of supported catalyst and its use in prepolymerization is disclosed in col. 15, lines 24-67. Polymerization reactions are also carried out in a fluidized gas phase reactor (col. 16, lines 29-32). The combination of references would have suggested to one having ordinary skill in the art that the catalyst of Canich *et al.* may be modified according to the process of Brinen *et al.* in order to reduce reactor fouling during polymerization. Therefore, it would have been obvious to one having ordinary skill in the art to make the catalyst of Canich *et al.* according to the process of Brinen *et al.*, and since the process appears general and applicable to a variety of catalyst, one having ordinary skill in the art would have expected such a modification to work with a reasonable expectation of success. The combination is especially obvious since Brinen *et al.* contemplates that the catalysts of Canich *et al.* are useful for practicing the invention.

4. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinen *et al.* in view of Stevens *et al.* (U.S. 5,064,802).

The discussion of the disclosures of the prior art of Brinen *et al.* from paragraph 2 of this office action is incorporated here by reference. Brinen *et al.* teaches that the inventive process for preparing supported catalyst is applicable to known catalysts such as those disclosed in Stevens *et al.*, U.S. 5,064,802, the disclosure of which is fully incorporated by reference (col. 3, line 45). Turning to the secondary reference, Stevens *et al.* teaches polymerization of olefin(s) in the presence of a supported catalyst prepared from a constrained group metallocene-like complex of general formula $(\text{Cp}^*)\text{-Z-Y-M}(\text{X})_n$ (claims 1-5) and ionic activator of formula $(\text{L-H})_d^+[\text{A}]^{d-}$ (claims 6-10). The combination of references would have suggested to one having ordinary skill in the art that the catalyst of Stevens *et al.* may be modified according to the process of Brinen *et al.* in order to reduce reactor fouling during polymerization. Therefore, it would have been obvious to one having ordinary skill in the art to make the catalyst of Stevens *et al.* according to the process of Brinen *et al.*, and since the process appears general and applicable to a variety of catalyst, one having ordinary skill in the art would have expected such a modification to work with a reasonable expectation of success. The combination is especially obvious since Brinen *et al.* contemplates that the catalysts of Stevens *et al.* are useful for practicing the invention.

5. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinen *et al.* in view of Jacobsen *et al.* (U.S. 5,834,393).

The discussion of the disclosures of the prior art of Brinen *et al.* from paragraph 2 of this office action is incorporated here by reference. Brinen *et al.* teaches that the inventive process for preparing supported catalyst is applicable to a wide variety of known catalysts (col. 3, line 1-56), but there is no teaching of the catalyst recited in the instant claims. Jacobsen *et al.* teaches preparation of a supported catalyst system comprising a constrained group metallocene-like catalyst and a borate activator containing at least one active hydrogen. The catalyst system $\text{Me}_2\text{Si}(\text{C}_5\text{Me}_4)(\text{N}-t\text{-Bu})\text{Zr}(\eta^4\text{-C}_5\text{H}_8)/[\text{Et}_3\text{NH}][\text{B}(\text{C}_6\text{F}_5)(\text{C}_6\text{H}_4\text{-OH})]$ is exemplary (example 20). Inventive supported catalysts can be subjected to prepolymerization (col. 22, line 63), and they are sufficiently stable for use in gas phase polymerization (col. 23, lines 35-55). The combination of references would have suggested to one having ordinary skill in the art that the catalyst of Jacobsen *et al.* may be modified according to the process of Brinen *et al.* in order to reduce reactor fouling during polymerization. Therefore, it would have been obvious to one having ordinary skill in the art to make the catalyst of Jacobsen *et al.* according to the process of Brinen *et al.*, and since the process appears general and applicable to a variety of catalyst, one having ordinary skill in the art would have expected such a modification to work with a reasonable expectation of success. The combination is especially obvious since Brinen *et al.* contemplates that the catalysts of Jacobsen *et al.* are useful for practicing the invention.

Response to Arguments

6. The rejections of claims based on Gauthier *et al.* (U.S. 6,777,366), set forth in paragraphs 11-13 of the previous office action dated , 2008 have been overcome by amendment.

The rejections of claims based on Ernst *et al.* (WO 01/25296), set forth in paragraphs 14-16 of the previous office action have been overcome by amendment.

The rejections of claims based on Specia *et al.* (U.S. 5,688,734), set forth in paragraphs 17-20 of the previous office action have been overcome by amendment.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu S. Jagannathan, can be reached at (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/Rip A. Lee/
Art Unit 1796

October 13, 2008

/Vasu Jagannathan/

Supervisory Patent Examiner, Art Unit 1796

